IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7167 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

N.G.MANSURI - Respondent(s)

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Appearance :

MRS FALGUNI D PATEL for Petitioner No(s).: 1.

MR JS BRAHMBHATT for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/08/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner Gujarat State Road Transport Corporation has challenged the legality

and validity of the judgment and award passed by the Industrial Court, Ahmedabad, dated 15.9.2004 passed in Reference (IT) No.23/1998 by which the Industrial Court has partly allowed the said Reference and quashed and set aside the order of punishment imposed by the Disciplinary Authority of withholding of 2 increments with permanent future effect w.e.f. 23.4.1996 and substituted the same to withholding of 2 increments without permanent future effect.

2. The respondent workman was serving as a Conductor and while he was on duty on 21.11.1993 it was found by the Checking Squad that out of 19 passengers, he has not issued tickets to 6 passengers and allowed the passengers to travel without tickets and on the aforesaid allegation, Departmental Inquiry was initiated against him. In the Departmental Inquiry the charge of not issuing the tickets to 6 passengers out of 19 passengers in the bus came to be held to be proved and the Disciplinary Authority by order dated 30.5.1994 imposed the punishment of dismissing the respondent workman from service. The respondent workman challenged the said order of punishment of dismissal before the First Appellate Authority and the First Appellate Authority though held that the respondent has

committed misconduct, interfered with the order of punishment imposed by the Disciplinary Authority and set aside the order of dismissal, however, imposed the punishment of withholding of 2 increments with permanent future effect and further passed an order to treat the period from the date of passing of the order of dismissal till the order passed by the First Appellate Authority as leave without pay. Being aggrieved and dissatisfied with the order passed by the First Appellate Authority, the respondent workman raised industrial dispute which was referred to Industrial Court, Ahmedabad for its adjudication being Reference (IT) No. 23/1998. The Industrial Court, Ahmedabad, though has held that the respondent workman has not issued the tickets to 6 passengers however, no dishonest intention is proved on the part of the respondent workman and therefore, the Industrial Court quashed and set aside the order of punishment imposed by the First Appellate Authority of withholding of 2 increments with permanent future effect and reduced it to withholding of 2 increments without permanent future effect by its judgment and award dated 15.9.2004 by holding that the punishment imposed by the First Appellate Authority is too harsh. Being aggrieved and dissatisfied with the judgment and award passed by the

Industrial Court, Ahmedabad dated 15.9.2004 passed in Reference (IT) No.23/1998, the petitioner corporation has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Ms. Falguni D. Patel, learned advocate appearing on behalf of the petitioner corporation has vehemently submitted that when the charge of not issuing the tickets to 6 passengers out of 19 passengers only, came to be held to be proved against respondent workman and the distance between the bus-stand and the place of checking was 6 kms. and it was a local bus and only on issuing the tickets the bus can be started and when the First Appellate Authority itself interfered with the order of punishment imposed by the Disciplinary Authority while quashing and setting aside the order of dismissal and has imposed the punishment of withholding of 2 increments with future permanent effect only, the Industrial Court has materially erred in interfering with the said punishment and reducing it to withholding of 2 increments without permanent future effect. It is further submitted that in fact not issuing tickets to the passengers itself is a serious misconduct for which the order of dismissal is justified. However, when the

First Appellate Authority itself has set aside the order of dismissal and imposed the punishment of withholding of 2 increments with permanent future effect which has been accepted by the corporation the same was not further required to be reduced by the Industrial Tribunal and therefore, it is requested to allow the present Special Civil Application. She has relied upon the judgments of the Hon'ble Supreme Court in case of ***Regional Manager, RSRTC V/s. Ghansham Sharma reported in 2002 10 SCC p.330*** and in another case of ***Regional Manager, Rajasthan State Road Transport Corporation V/s. Sohanlal reported in (2004)8 SCC p.218*** and has submitted that non- issuance of tickets is held to be serious misconduct by the Hon'ble Supreme Court therefore, it is submitted that exercise of powers of the Industrial Court under Section 11(A) of the I.D.Act in the present case was not warranted and is nothing but over exercising the jurisdiction so far as the Industrial Court is concerned and therefore, it is requested to allow the present Special Civil Application.

4. Shri J.S.Brahmbhatt, learned advocate appears on behalf of the respondent workman and filed affidavit-in -reply on behalf of the respondent workman. It is submitted by

him that when considering the facts and circumstances of the case and on appreciation of the evidence the Industrial Court has exercised the powers under Section 11(A) of the I.D.Act and it is found that the dishonest intention on the part of the respondent workman has not been proved, the Industrial Court was justified in interfering with the order of punishment imposed by the First Appellate Authority and therefore, it is submited that the same is not required to be interfered with by this Court in exercising the powers under Articles 226 and 227 of the Constitution of India. It is further submitted that as rightly held by the Industrial Court withholding of 2 increments with permanent future effect was too harsh and disproportionate to the charge proved against him and therefore, the same is rightly quashed and set aside by the Industrial Court and therefore, it is requested to dismiss the present Special Civil Application.

5. It is not in dispute that there were only 19 passengers in the bus and the bus was local bus. As per the rules only after the stand booking and issuing the tickets to all the passengers, the bus is permitted to proceed further. The distance between the bus-stand and the checking place was 6 kms. Out of 19 passengers, it was

found that 6 passengers were travelling without tickets and the respondent workman had not issued tickets to 6 passengers. The charge of not issuing tickets to 6 passengers came to be held to be proved by the Inquiry Officer in the Departmental Inquiry as well as by the Industrial Court. The defence on the part of the respondent workman that his health was not good, has not been accepted by the Industrial Court. Even the First Appellate Authority has interfered with the order of punishment imposed by the Disciplinary Authority and has quashed and set aside the order of dismissal passed by the Disciplinary Authority and substituted the same by imposing the punishment of withholding of 2 increments with future permanent effect. Inspite of the aforesaid facts, the Industrial Court interfered with the order of punishment imposed by the First Appellate Authority by holding that it is not proved that there was any dishonest intention on the part of the conductor in not issuing the tickets, and thus the industrial Court has committed an error. Fact of not issuing the tickets to the passengers and allowing the passengers to travel in the bus without tickets itself is a serious misconduct and even as held by the Hon'ble Supreme Court in case of ***Regional Manager, RSRTC V/s. Ghansham Sharma reported in 2002 10 SCC p.330*** and in

another case of ***Regional Manager, Rajasthan State Road Transport Corporation V/s. Sohanlal reported in (2004)8 SCC p.218*** and even the order of dismissal is justified. As held by the Hon'ble Supreme Court the conductor is holding the post of trust and confidence and when he himself is allowing the passengers to travel in the bus without tickets, there would be monetary loss to the corporation and not only the monetary loss but it will lead to loss of confidence also. In the present case, the Disciplinary Authority imposed punishment of dismissal however, the same came to be interfered with by the First Appellate Authority and the First Appellate Authority substituted the same by withholding of 2 increments without future permanent effect. Therefore, the First Appellate Authority itself has taken a lenient view though it was not warranted. Under the circumstances, the Industrial Court has materially erred in further reducing the punishment to withholding of 2 increments without future permanent effect by holding that withholding of 2 increments with future permanent effect is disproportionate and too harsh. On the contrary and in fact, considering the judgment of the Hon'ble Supreme Court, the order of dismissal was warranted, still the First Appellate Authority has taken a lenient view which has been

accepted by the petitioner corporation and therefore, quashing and setting aside the order of punishment imposed by the First Appellate Authority and substituting the same while exercising the powers under Section 11(A) of the I.D.Act by the Industrial Court is exceeding the jurisdiction by the Industrial Court and the same can be said to be not exercising powers judiciously. Under the circumstances, the judgment and award passed by the Industrial Court cannot be permitted to be sustained and the same is required to be quashed and set aside.

6. It is also required to be noted that there are 18 defaults in the credit of the respondent workman and considering the same also the Industrial Court was not justified in interfering with the order imposed by the First Appellate Authority exercising the powers under Section 11(A) of the I.D.Act.

7. For the reasons stated above, the petition succeeds. The judgment and order passed by the Industrial Court, Ahmedabad, dated 15.9.2004 passed in Reference (IT) No.23/1998 is hereby quashed and set aside and the order passed by the First Appellate Authority dated 23.4.1996 is hereby restored.

8.Rule is made absolute to the aforesaid extent however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.